

mentioned parties of law

In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:

SUZANNE HUTCHINSON
(Chapter 7 Case 90-41382)

Debtor

ROBERT L. COLEY,
UNITED STATES TRUSTEE
REGION 21

Plaintiff

v.

JACK C. FARMER
d/b/a American Documents

Defendant

Adversary Proceeding

Number 90-4175

FILED

at 1 O'clock & 52 min. PM

Date 6/19/91

MARY C. BECTON, CLERK
United States Bankruptcy Court
Savannah, Georgia MB

**ORDER ON MOTION FOR REHEARING AND
ADDITION OF AN INDISPENSABLE PARTY**

The above Motion was filed March 29, 1991. After careful consideration of the authorities cited the contentions set forth will be dealt with in

490-0175, reh

the order presented.

1) Defendant moves for the addition of the Attorney General of the United States as an indispensable party pursuant to F.R.C.P. 19. However, Defendant merely paraphrases the language of Rule 19 in support of his motion. It is not shown how this Court's determination of the propriety of Defendant's activities undertaken on behalf of debtors in any way implicates the need for joinder. Indeed complete relief can and has been rendered as between the immediate parties to this action and the person proposed to be added neither asks to be joined herein, nor claims an interest in the outcome which would be impaired by his exclusion nor is there any threat of multiple or inconsistent obligations being imposed upon the Attorney General as a result of his non-party status in this action. Finally, Defendant failed to move for joinder prior to a final ruling in this matter. As a result, joinder is neither mandated by Rule 19 nor is Defendant's motion timely. It is therefore denied.

2) Defendant asserts a lack of due process in what he alleges is an adjudication of criminality in this Court's Order dated March 15, 1991. In his argument in support of this assertion Defendant cites a number of constitutional decisions establishing the due process to which an accused criminal is entitled. This Court does not dispute the holdings of those cases. However, Defendant has totally

misapprehended the applicability of those cases to my prior order. The within action is purely civil. My prior Order made no criminal adjudication. I did conclude as part of this civil matter that Defendant had engaged in the unauthorized practice of law and enjoined him from doing so. That finding, however, was made based on a preponderance of the evidence standard in a civil matter and has no bearing upon whether he is guilty beyond a reasonable doubt of any criminal act. Moreover, the injunction against engaging further in unauthorized practice, if anything, is in Defendant's interest since, if obeyed, it would insure that he will not commit a crime in the future. For the foregoing reasons, the cases cited by Defendant do not apply in this matter and no sufficient grounds for granting the motion are stated.

A final note - perhaps no more eloquent case for state regulation of those who handle legal matters for others could be stated than Defendant's wholly frivolous argument on this point. His utter inability to distinguish the most fundamental of legal concepts, i.e., the nature of civil as opposed to criminal proceedings, speaks volumes on the subject of how dangerous it would be to entrust the financial future of debtors in this Court to his pitifully non-existent expertise in the esoterica of bankruptcy law and procedures. Mr. Farmer stated at trial that his only desire is to help others. If that be the case let him go volunteer at a homeless shelter, a soup kitchen or a hospital - however, he should not be permitted to assist debtors in legal matters any more than he should be permitted to perform brain

surgery.

3) This ground is without merit. Plaintiff prayed generally for such other and further relief as the Court may deem proper. Moreover, in his opening statement and closing argument, learned counsel for the United States Trustee, Jack H. Usher, urged that injunctive relief should be granted. Evidence introduced at trial clearly established that the grounds for an injunction existed. Clearly under Bankruptcy Rule 7015(b) the issue of injunctive relief was tried by the express or implied consent of the parties even if not explicitly set forth in written pleadings.

4) Defendant alleges a denial of equal protection. However, to the extent that Defendant may legitimately engage in activities in which attorneys in this Court engage, there is absolutely no evidence that Defendant was treated any differently. To the extent that Defendant is asserting that the Constitution guarantees equal protection to him, an unqualified, uneducated, unlicensed individual, to engage in the same activities as a licensed attorney, I find such an assertion to be absurd. Defendant has not cited any authority in support of his position. Fundamentally the equal protection clause guarantees equal treatment by the law to persons similarly situated. It is not a denial of equal protection to imprison a felon and allow law abiding citizens to remain free. The law may draw distinctions between persons not similarly situated. Similarly the law may

legitimately distinguish between conduct which is permissible by licensed professionals and unlicensed persons in their dealings with the public. Again, Defendant's failure to comprehend the most fundamental of legal concepts is clear, as is the danger he poses to gullible, financially strapped members of the public who respond to his advertising. Defendant also argues that Rule 9009 allows modification of the official forms and that I erred in ruling that he must reveal the sums paid by debtors he assists. However, Rule 9009 explicitly requires that any altered form must substantially comply with the official form. It is clear that Defendant's altered form does not substantially comply as set forth on pages three and four of my original Order and that the obvious purpose of Defendant's alteration was to conceal the fact that he was assisting debtors and being paid a fee for doing so.

5) Defendant alleges the Order is ambiguous and contradictory. I have carefully re-read the Order and Defendant's argument on this point and find the Order to be clear and consistent. I can only conclude that Defendant does not understand it because he does not wish to understand it, or to abide by it. Defendant comes perilously close to risking the imposition of sanctions under Bankruptcy Rule 9011 in asserting this argument (and perhaps others).

6) Defendant asserts that the Order is arbitrary in setting \$25.00 as the reasonable value of stenographic services. To the contrary, I ruled that

Defendant must return the entire fee collected in this case both because it was unreasonable and because Defendant concealed the amount and the recipient of the fee and because no application pursuant to Bankruptcy Rule 2016 was filed. The Order does, in addition, permit Defendant the sum of \$25.00 for "bonafide typing services" as set forth in the Order - without a separate application. This amount was set, based in part on testimony in other cases which revealed that the time required to generate a set of bankruptcy forms by computer was approximately one-half to one hour. I have therefore determined that a permissible fee of \$25.00 may be charged, without the formality of a Rule 2016 application, unless an applicant desires a larger fee, in which case Rule 2016 must be complied with and a hearing will be set.

7) Defendant argues that the Order was arbitrary in finding that he attempted to conceal the amounts paid by debtors. As set forth in the Order and in Paragraph Four of this Order, Defendant altered the official forms so that his identity would not be revealed, as required by law. I stand on those findings as fully supported in the record and as evidence that Defendant did attempt to conceal his involvement in this case.

8) It is quite possible that the Defendant has raised at least a colorable argument on this point. Although I do not find support for the allegation

that this Court has adjudicated the Defendant's acts criminal inasmuch as criminal law is outside the jurisdiction of this Court, the Constitutional guaranty against self-incrimination must be accorded a liberal construction in favor of the right it is intended to secure. Hoffman v. United States, 341 U.S. 479, 71 S.Ct. 814, 95 L.Ed. 1118 (1951). The Constitutional protection against self-incrimination applies in civil proceedings as well. McCarthy v. Arndstein, 266 U.S. 34, 45 S.Ct. 16, 69 L.Ed. 158 (1924). Although 11 U.S.C. Section 344 does provide the means to grant immunity from subsequent prosecution for persons required to provide information under Title 11, I will not grant immunity at this time but rather will delete that portion of my March 15, 1991, Order requiring disclosure of the names and addresses of all parties (including persons, corporations, partnerships and other entities) with whom Defendant has or intends to provide any services relating to bankruptcy matters in this District. The United States Trustee is, however, authorized to take whatever steps he deems appropriate to deal with parties for whom Defendant has performed bankruptcy related services as such information is obtained from other sources. In the event the United States Trustee deems it necessary to bring an appropriate motion pursuant to 11 U.S.C. Section 344, I will entertain such at the appropriate time.

9 through 12) Defendant asserts in these paragraphs that this Court in its Order, or that Georgia law, is limiting free expression and/or denying access

to the courts.

With respect to the free speech cases, Defendant has either failed to read the brief prepared for him by others, or has failed to read and comprehend the cases he cites, none of which stand for the proposition he asserts. The speech or expression Defendant seeks protection of is his alleged right to represent others in legal proceedings. No case has found such to be constitutionally protected.

Cohen dealt with a party wearing a jacket inscribed with vulgar language. Mosley struck down a law outlawing peaceful picketing in public. Erzonsnik dealt with an ordinance prohibiting the outdoor exhibition of films containing nudity. Landmark was a free press case. Cultum upheld the right of licensed realtors who were not licensed attorneys to complete certain standardized form agreements in connection with transactions they personally handled without compensation but must assuredly did not uphold a realtor's right to practice law. Pioneer Title held that a title company had in fact engaged in the unauthorized practice of law when the company, even with the assistance of its counsel, determined the legal sufficiency of certain instruments to accomplish the wishes of the parties it represented. The proceedings of the State Bar of California, Wisconsin, Arizona or Nevada, while interesting in any policy debate over the wisdom of unauthorized practice of law statutes, have no bearing on Defendant's

constitutional claim. Brown was an election case. Schaumburg dealt with door-to-door solicitations by charitable organizations. Keyishian dealt with an anti-treason statute which impacted political expression. Chaplinsky originated the "fighting words" doctrine, setting forth an exception to First Amendment protection for lewd and obscene speech, or "fighting words" which could reasonably be expected to incite an immediate breach of the peace. Cantwell concerned freedom of religion and conduct and summarized the distinction:

[t]he First Amendment embraces two concepts - freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.

60 S.Ct. at 303-04 (emphasis provided). Brandenburg reformulated the "clear and present danger" test and set forth the standard for reviewing the constitutionality of punishment for advocacy of unlawful conduct. Renton concerned the location of adult theatres *vis a vis* residential areas and upheld certain restrictions as reasonable time, place and manner regulations of speech. Doran dealt with the constitutionality of nude dancing. Roadan concerned the warrantless seizure of film being exhibited to the general public as a form of prior restraint. Schad dealt with a zoning restriction on nude dancing establishments. Clark upheld a National Park Service regulation prohibiting camping in Lafayette Park as a reasonable time, place and

manner restriction. Young held that reasonable time, place and manner restrictions of protected speech, where those regulations are necessary to further significant government interests, are permitted by the First Amendment. The question whether speech is protected often turns on the content of the speech. O'Brien dealt with speech in the form of conduct - that of burning draft cards in protest of the Vietnam War. The O'Brien court found that the substantial government interest in assuring the availability of draftees for national defense justified the appropriately narrow statute punishing intentional destruction of draft cards. Yick Wo was an equal protection case prohibiting the discriminatory application of a laundry licensing law based upon racial classifications. Button invalidated a ban on solicitation of legal business as applied to NAACP activity in financing desegregation litigation. Dombrowski involved overbroad language defining subversive activities. Papachristou involved archaic classifications of vagrancy held void for vagueness. Reese concerned an unconstitutionally vague statute providing penalties for interference with the voting rights of minorities. Finally, Procunier dealt with a California statute restricting the speech of prison inmates.

Although advertising and other commercial speech is not beyond the scope of First Amendment protection, New York Times v. Sullivan, 376 U.S. 254 (1964), speech with a commercial purpose or setting has been given somewhat different treatment by the Court than other forms of speech.

In Central Hudson Gas & Electric Corp. v. Public Service Commission, 447 U.S. 557 (1980), the United States Supreme Court announced a four part test to determine the constitutionality of regulations of commercial speech:

(1) the speech must be entitled to constitutional protection, that is:

(a) It must concern lawful activity; and

(b) It must not be false or misleading.

(2) If the speech is protected, the regulation must serve a substantial government interest.

(3) If it does, then the regulation must directly advance the asserted substantial government interest; and

(4) It must be no more extensive than necessary to serve that interest.

The "speech" the Defendant insists is protected does not even meet the first element of this test in that it is prohibited by Georgia law. Moreover, as has been pointed out in my underlying order, the Defendant's methods are at best misleading. In addition, I find that the regulation of the practice of law in this state serves a substantial government interest in protecting the public from uneducated and unlicensed practitioners. I further note that the regulations requiring a license to practice law in this state directly advance that substantial government interest and

are no more extensive than necessary to serve that interest.

After exhaustive review, Defendant has failed to cite a single case which even remotely suggests that an unlicensed person has a First Amendment right to practice law. Nor will this Court create such a right where none has been shown to exist. Defendant's arguments that the prior Order of this Court or state law prohibiting the unauthorized practice of law is afoul of the Constitution are wholly unpersuasive.

For the foregoing reasons the Motion for Rehearing and Addition of an Indispensable Party filed by the Defendant is denied.

The Order of March 15, 1991, is modified to delete that portion of paragraph three of the Order requiring the Defendant to provide to the United States Trustee the names and addresses of all parties (including persons, corporations, partnerships and other entities) with whom he has or intends to provide any service relating to bankruptcy matters in this District. The United States Trustee, however, is still authorized to contact any such persons about whom it has obtained such information from other sources and to take whatever appropriate measures to inform those parties of their rights with regard to my ruling on these matters. The revised Order therefore reads as follows:

ORDER

Inasmuch as I find that Defendant Farmer was engaged in the unauthorized practice of law in this state in violation of O.C.G.A. Sections 15-19-51 and 15-19-56, and 11 U.S.C. Section 329, IT IS THE ORDER OF THIS COURT that:

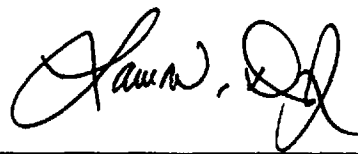
- 1) Defendant Farmer and all persons now or hereafter in his employ in any capacity and doing business under any name be and hereby are permanently enjoined from engaging in the unauthorized practice of law, which unauthorized actions include: providing counseling, advice, and recommendations with respect to any of the provisions of the Bankruptcy Code and Rules; preparing either directly or indirectly, the bankruptcy petition, statement of affairs and schedules; and preparing any motions or applications of any kind pertaining to bankruptcy. However, Defendant will be permitted to perform a bona fide typing service provided the typing service performed is strictly limited to typing verbatim of pleadings or forms prepared by individual debtors, exactly as submitted by the debtors to the Defendant. For any and all such typing services rendered, Defendant shall be required to

maintain records on file including the original copy submitted by the debtor for typing, in the debtor's handwriting, to evidence strict compliance with this Order.

- 2) That Defendant shall, within ten (10) days from the date of this Order, remit to Debtor, Suzanne Hutchinson, any and all fees collected for services rendered in connection with her bankruptcy filing - that is, \$149.00 or such other amount as Defendant received from the Debtor. In view of the fact that said "services" were unlawful and efforts were made to conceal said payments from this Court, Defendant shall not retain any funds collected from this Debtor. Let judgment against Defendant for said amount be entered.
- 3) The United States Trustee is authorized to take whatever steps he deems appropriate to inform parties for whom the Defendant has rendered bankruptcy related services of their rights with regard to the rulings herein and in the March 15, 1991, Order.
- 4) For any bona fide typing services rendered in compliance with Paragraph "1" of this Order, Defendant's maximum compensation is limited to the amount of \$25.00, unless a showing is made to this Court, in compliance with Bankruptcy Rule 2016, that a higher amount is justified under the

circumstances for each and every case in which a higher amount is sought.

- 5) With regard to advertising, Defendant is enjoined from advertising in any misleading fashion which leads a reasonable lay person to believe that he offers the public legal services, legal advice, or legal assistance regarding bankruptcy. Defendant is therefore limited to advertising his business activities of providing secretarial, notary, and/or typing services. Defendant may also advertise that he sells bankruptcy forms and general printed information with regard to those forms so long as such information does not constitute legal advice as defined in the March 15, 1991, Order.
- 6) Nothing in this Order shall be construed as limiting the United States Trustee's authority to request further sanctions in the event of any violation by Defendant Farmer, or others in his employ, doing business under any name within this District.



Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This 18th day of June, 1991.